

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DAVID KENT FITCH, 34775-048,

Plaintiff,

vs.

FASIL VAKIL AHMED, et al.

Defendants.

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CIVIL NO. 19-cv-1177-JPG

ORDER DISMISSING CASE

GILBERT, District Judge:

This case was opened when Plaintiff David Kent Fitch filed a Motion for Emergency Expedited Preliminary Injunction without a Complaint on October 28, 2019. (Doc. 1). The Court construed the filing as a motion for a temporary restraining order and denied it without prejudice on October 30, 2019. (Doc. 3). Plaintiff was ordered to file a Complaint on or before November 27, 2019, if he intended to pursue his claims in this case. (*Id.*). Plaintiff was also ordered to file a Motion for Leave to Proceed *in forma pauperis* (“IFP”) or pay the full filing fee of \$400.00 for this action on or before November 27, 2019. (*Id.*). Plaintiff was warned in that Order that failure to pay the filing fee, file for IFP, or file a Complaint would result in dismissal of this case. The date to comply has passed, and Plaintiff has not paid the filing fee, filed for IFP, or filed a Complaint as ordered.

Accordingly, this case is **DISMISSED** without prejudice for Plaintiff’s failure to comply with several court orders (Doc. 3). *See* FED. R. CIV. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). This dismissal shall **NOT** count as one of Plaintiff’s three allotted “strikes” under 28 U.S.C. § 1915(g). Plaintiff’s obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee

of \$400.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

The agency having custody of the plaintiff is directed to remit the \$400.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$400.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, the agency shall begin forwarding monthly payments of 20% of the preceding month's income credited to Plaintiff's trust fund account (including all deposits to the inmate account from any source) until the statutory fee of \$400.00 is paid in its entirety. The agency having custody of Plaintiff shall forward payments from Plaintiff's account to the Clerk of Court each time the Plaintiff's account exceeds \$10.00 until the \$400.00 filing fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois. The Clerk is **DIRECTED** to send a copy of this Order to the Trust Fund Officer at the Greenville Federal Correctional Institution *upon entry of this Order*.

The Clerk's Office is **DIRECTED** to close this case.

IT IS SO ORDERED.

DATED: December 5, 2019

s/ J. PHIL GILBERT
United States District Judge